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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,265	03/18/2004	Dale VenHuizen	M406	5383

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EXAMINER

NOVOSAD, CHRISTOPHER J

ART UNIT PAPER NUMBER

3671

DATE MAILED: 02/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/803,265	Applicant(s) VENHUIZEN, DALE	
	Examiner Christopher J. Novosad	Art Unit 3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) 5 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 August 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election of Invention I, claims 1-4 in the reply filed on January 23, 2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Accordingly, Claim 5 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation "the type" in line 1 of claims 1 and 3 is indefinite since it is unclear as to exactly what "the type" is supposed to be.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Olson
4,915,258.

With respect to claim 1, Olson shows in a seed planter 10 having a metering unit 24 for retaining a circular rotatable seed disk 78, the seed disk 78 having a center (unnumbered), a first surface (unnumbered), a second opposing surface (unnumbered), and a plurality of transverse spaced vacuum holes 136 through the seed disk 78, wherein seeds 148 are introduced into a first cavity (left side of 88 in Fig. 3) in a housing 50 defined by the first surface (unnumbered) and a vacuum is drawn into a second cavity (right side of 88 in Fig. 3) in the metering unit 24 defined by the second surface (unnumbered), such that seeds 148 are retained against the vacuum holes 136 until they are dropped through a seed chute 44 and into a seed tube 26 (Fig. 11), and wherein the seed tube 26 has an upper end 156 that fits around the seed chute 44 and the upper end 156 of the seed tube 26 is moveable with respect to the seed chute 44, the improvement comprising a spacer (unnumbered; bottom rightmost member of 44 in Fig. 11) between a surface (unnumbered) of the seed chute 44 and a surface (unnumbered) of the seed tube 26 to reduce lateral movement of one with respect to the other thereof.

With respect to claim 3, Olson shows a spacer (unnumbered; bottom rightmost member of 44 in Fig. 11) for use in a seed planter 10 having a metering unit 24 for retaining a circular rotatable seed disk 78, the seed disk 78 having a center (unnumbered), a first surface (unnumbered), a second opposing surface (unnumbered), and a plurality of transverse spaced vacuum holes 136 through the seed disk 78, wherein seeds 148 are introduced into a first cavity

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(left side of 88 in Fig. 3) in a housing 50 defined by the first surface (unnumbered) and a vacuum is drawn into a second cavity (right side of 88 in Fig. 3) in the metering unit 24 defined by the second surface (unnumbered), such that seeds 148 are retained against the vacuum holes 136 until they are dropped through a seed chute 44 and into a seed tube 26 (Fig. 11), and wherein the seed tube 26 has an upper end 156 that fits around the seed chute 44 and the upper end 156 of the seed tube 26 is moveable with respect to the seed chute 44, the spacer (unnumbered; bottom rightmost member of 44 in Fig. 11) comprising a spacer body (unnumbered; bottom rightmost member of 44 in Fig. 11), the spacer body (unnumbered; bottom rightmost member of 44 in Fig. 11) attachable to one of an outer surface (unnumbered) of the seed chute 44 and an inner surface (unnumbered) of one of the seed chute 44 and the seed tube 26 to reduce lateral movement of one with respect to the other.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Olson in view of Austin, Jr. et al.

Olson shows the planter and spacer as noted.

The claims distinguish over Olson in requiring the spacer to have a tapered edge to aid in the assembly of the seed tube to the seed chute.

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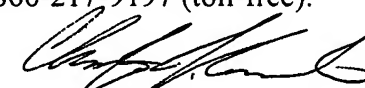
Austin, Jr. et al. show a spacer 30 that has a tapered edge 34 (note col. 1, lines 57 and 58) to aid in the assembly of the seed tube 20,40,50,60 to the seed chute 10.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the spacer (unnumbered; bottom rightmost member of 44 in Fig. 11) of Olson with a tapered edge as shown in Austin, Jr. et al. for the reason noted above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher J. Novosad whose telephone number is 571-272-6993. The examiner can normally be reached on Monday-Thursday 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached at 571-272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher J. Novosad
Primary Examiner
Art Unit 3671

February 6, 2006